

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

M. Rodney Jones #244189, a/k/a Rodney)
M. Jones or Rodney E. Jones,) C/A No. 3:04-1760-MBS
)
Petitioner,)
)
vs.)
) **OPINION AND ORDER**
United States Marshals Service;)
United States Department of the Treasury;)
and Internal Revenue Service,)
)
Respondents.)
)

Petitioner M. Rodney Jones is an inmate in custody of the South Carolina Department of Corrections (SCDC). Petitioner sent a letter addressed to the United States Marshal's Service on June 9, 2004, complaining about alleged "illegal activities" performed by the SCDC inmate population and correctional staff, and seeking an audience with the Treasury Department and Internal Revenue Service for the purpose of "help[ing them] stop tax fraud, tax invasion did by SCDC business and its inmates." Entry 1. Because it presented a case or controversy, Petitioner's letter was assigned a civil action number.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. The Magistrate Judge reviewed Petitioner's submission pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A and the Prison Litigation Reform Act of 1996. On June 10, 2004, the Magistrate Judge filed a Report and Recommendation in which he recommended that the case be summarily dismissed because Petitioner, as a private person, possesses no judicially cognizable interest in the prosecution or non-prosecution of another person. The Magistrate Judge further noted that Petitioner has been "struck

out" under the "three strikes" provision of the Prison Litigation Reform Act, and that the case should be summarily dismissed because Petitioner was not in imminent danger of serious physical injury when he delivered the letter to prison officials for mailing on April 30, 2004. The Magistrate Judge further recommended that the case be deemed a "strike" for purposes of the "three strikes" rule of 28 U.S.C. § 1915(g). On June 17, 2004, Petitioner filed an objection to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Petitioner contends that the court erroneously construed his letter as a civil action. He contends he had been "misinstructed" as to how to send the letter directly to the United States Marshal, Department of the Treasury, and Internal Revenue Service.¹ Petitioner asserts that he is well aware of how to file the proper paperwork to commence a civil action. Petitioner therefore requests that case be dismissed and no strike be placed against him.

The court construes Petitioner's response as a motion to dismiss under Rule 41(a), FRCP. Petitioner's motion to dismiss is granted. Since Petitioner seeks to have the case dismissed on the

¹ The envelope in which the letter was sent is addressed to the Clerk of the United States District Court and is designated "legal mail."

grounds that the court should not have construed his letter as a complaint, the “mandamus” he also filed on June 17, 2004 (Entry 5) is moot.

The court declines to deem this action a “strike” for purposes of the “three strikes” rule of 28 U.S.C. § 1915(g). Petitioner is cautioned, however, that his continued misuse of the legal system will result in additional strikes being placed against him.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

September 23, 2005

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.